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Sixty-seventh session

SUMMARY RECORD OF THE 1805th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 November 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. BHAGWATI
(Vice-Chairperson)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Initial report of the People's Republic of China on the Hong Kong Special Administrative Region (continued) (CCPR/C/HKSAR/99/1; CCPR/C/67/L/HKSAR/1; supplementary report with no symbol, distributed in the meeting room, in English only)

1. At the invitation of the Chairperson, the members of the delegation of the Hong Kong Special Administrative Region (HKSAR) resumed their places at the Committee table.

2. The CHAIRPERSON invited Committee members to put their questions concerning the second cluster of issues to the delegation.

3. Ms. EVATT, referring to question 17 of the list of issues, expressed dismay at the allegations by the Equal Opportunities Commission of sex discrimination in the public education system. Could the delegation confirm whether, in separate grading systems, the high-school entrance requirement for girls was higher than for boys, and that despite girls' generally higher marks, fewer of them gained access to the school of their choice? Was it true that the Government intended to seek an exemption to the sex discrimination laws in order to preserve that discriminatory practice?

4. Similarly, she inquired whether there were plans to lift the male-only exemption granted in the small-house scheme for indigenous New Territories inhabitants. Further, if it were true that the guidelines for the village elections were non-mandatory and that the procedure's compliance was not checked against the guidelines before the results were confirmed, she wished to know whether steps would be taken to correct the situation.

5. She saw the abolition of the fully-elected municipal councils and the transfer of their functions to various departments and agencies as a backward step for democracy. It underlined the absence of full democracy in regard to the election of both the Legislative Council and the Chief Executive, to which the Committee had often adverted and which remained unchanged. That delay in the achievement of full democracy was regrettable, particularly in the light of the authorities' oft-stated goal of strengthening participation in public affairs.

6. Would the delegation comment on a report of Hong Kong workers detained in China as "debt hostages" in commercial disputes between their employers and partners on the mainland?

7. Mr. ZAKHIA inquired whether the Family Status Code governing marriage, divorce, child custody and inheritance was a unified, civil and egalitarian code applied to both women and men. Was the penalty for adultery the same for women and men? Also, could human rights NGOs appeal to the courts for observance of those rights. If not, would granting them rights not contribute to the exerice of human rights in general?

8. Mr. ANDO, referring to trade union rights as established in article 22 of the Covenant, asked the delegation whether the requirement, under the 1997 Employment and Labour Relations (Miscellaneous Amendments) Ordinance, that a person seeking trade-union office should possess professional qualifications, did not limit that person's right to hold office in any trade union. He sought clarification from the delegation concerning the HKSAR Chief Executive's restrictions on the use of trade union funds, a measure described by ILO as unwarranted intervention in trade union rights.

9. Citing paragraphs 450 and 451 of the report, he said that 7 was unacceptable as the minimum age of criminal liabiliity, no matter what other conditions prevailed in Hong Kong. The explanation that crime syndicates might use children in order to avoid official search and arrest was less than satisfactory. Children of 7 needed the protection of society. Although they might receive special treatment as juvenile offenders, protection was one thing and liability another. Could the delegation say how that problem would be addressed?

10. Mr. SCHEININ sought clarification concerning article 160 of the Basic Law, which endowed the Standing Committee of the National People's Congress (SCNPC) with the power to declare that certain laws enforced in Hong Kong contravened that Law and, unless amended, would lose their validity (report, paras. 380-390). On what grounds had the SCNPC so concluded? Was it a legal opinion? The Basic Law was intended to secure the implementation of Covenant rights, including the fundamental rights of freedom of association and freedom of assembly. Instead, it was to be amended in a manner that not only failed in that intent, but violated those very rights.

11. He took particular issue with the reference in paragraph 381 (a) of the report to striking a balance between civil liberties and social order, which was not the philosophy underlying the Covenant. The Covenant embodied rights, and any infringement of its provisions must be scrupulously justified. Also, blanket prohibition of connections between local and foreign societies and foreign countries was not consistent with the Covenant, despite the authorities' claim to the contrary.

12. Mr. POCAR said he had been dismayed to hear that China might not be obliged to continue its reporting on Hong Kong. He was aware that the delegation represented the HKSAR and not the Government of China, but he firmly believed in China's continued reporting obligation, imposed on it by article 40 of the Covenant, and categorically established in the Committee's concluding observations on the 1996 Hong Kong report submitted by the United Kingdom. In 1997, that obligation had been recognized by the Chinese Government, which had expressed its intention to comply, as evidenced by its submission of the current report and its ambassador's presence at the meeting. That obligation had been an issue in the past, owing to the legal situation surrounding the handover, but it could no longer be allowed to be one. He would appreciate the delegation's comments.

13. Referring to the registration of associations and the "notice-of-no-objection" system for public assemblies and processions, he considered hardly satisfactory the delegation's assurance that no registration application had been rejected, no permission for assembly refused and no society banned as a

result. The statistics furnished were unreliable because, the vagueness of the notion of public order and security apart, such a system allowed for negotiation of the conditions governing the formation of an association or the commission of an act. The only useful statistics would be those indicating the actual number of associations which, in those conditions, had abandoned their intention to hold an assembly.

14. The pressure that the authorities could exert on individuals not only restricted their freedom, but was designed to discourage the holding of assemblies. NGO reports had spoken of limitations on the size of demonstrations and undue separation of demonstrators from their targets; that constituted abuse of power in the name of public order and national security.

15. Mr. HENKIN, declaring himself intrigued by the notion of "one nation, two systems", stressed that articles 19, 21 and 22 of the Covenant provided for certain restrictions on freedom on the basis that they were "necessary" in the interests of "national security". He wished to know who determined such a necessity and interpreted national security, and whether such decisions had ever been subject to judicial or other review. Article 23 of the Basic Law listed some of the crimes involved, and he wished to know where matters stood with regard to legislation under that article. What problems relating to Taiwan or Tibet, for example, could require the restrictions necessary for the HKSAR's security? Similarly, who defined "morals" and pronounced on moral requirements? And were those persons, too, subject to any control or review?

16. He had been struck by a reference to juveniles and juvenile crime. Having read of the existence in China of education through labour, he wondered how far the "one nation, two systems" policy would go in that regard. Lastly, was there any prospect of the extension of the 1951 Convention relating to the Status of Refugees to cover Hong Kong? It would be a pity for an important part of the world to be excluded from such an important convention.

17. Mr. LAN (Hong Kong SAR) said he was aware that Committee members, like many people in Hong Kong, would have wished for a speedier democratic process and a commitment to general elections before 2007. But a systematic and, therefore, gradual approach was required for the introduction of democracy, as most Committee members were well aware from their own countries' experience.

18. Hong Kong had undoubtedly missed many opportunities, but revisiting history and apportioning blame would serve no useful purpose. Hong Kong had been a late starter and while it lagged behind in some areas, it had made huge strides in others. It was a member of the World Trade Organization and an independent member of the Asia-Pacific Economic Cooperation (APEC) Forum. In any event, the Basic Law - the Constitution of the HKSAR, in whose drafting members of Hong Kong society had been broadly involved, had finally been agreed upon and had even been accepted by the community at large. The authorities were currently working to a schedule that provided for an increase in the number of elected seats on the Legislative Council, and in the numbers on the electoral colleges for election of the Chief Executive. There had been other improvements. Until 1997, the Chief Executive had never been Chinese, nor had any member of the Chinese community been consulted about his appointment. That state of affairs had been rectified with reunification,

and the appointment of Mr. C.H. Tung by an electoral college of 400, not to mention the votes cast by the functional constituencies of teachers, nurses and the like.

19. The machinery established by the Basic Law was geared to the year 2007, when, as agreed, the people of Hong Kong would take a fresh look at the organization of the territory. In developing its political system, the HKSAR needed to address other important issues as well, including close cooperation between the executive and the legislature, and maintaining general confidence - including investor confidence - in Hong Kong.

20. In reply to the question concerning public demonstrations and assemblies, he reiterated that not a single application had been rejected. Others might argue the point, because organizers had occasionally been asked to reduce the duration of a demonstration. An appeal body, chaired by a High Court judge, was currently examining the issue.

21. The HKSAR set great store by all human rights. He invited Committee members to visit Hong Kong and witness for themselves, among other things, the public demonstrations, which averaged 4.5 a day. The HKSAR was a neophyte in such matters, but hoped to find internationally-accepted solutions from the experience of other countries, some of which even prohibited all demonstrations during official business hours. Also, could there be media censorship when every day brought newspaper articles criticizing the Government, China and the Chief Executive?

22. One likely reason for the lower median wages of female workers was that many worked part-time. That was the general trend, but the same employment survey had shown that in many sectors - finance, real estate, business - women's median wage was higher than men's. The Convention on the Elimination of All Forms of Discrimination against Women recommended that the principle of equal pay for work of equal value should be incorporated in domestic legislation. The HKSAR Government supported, as a matter of principle, any proposal that would enable it to uphold the principle of equality.

23. Concern had been expressed about the powers of the Equal Opportunity Commission (EOC). Under the existing Sex Discrimination Ordinance, the EOC could handle systemic discrimination and bring legal proceedings in district courts if an individual complainant chose not to do so himself or herself. In the absence of a complainant, the EOC could carry out formal investigations and issue enforcement notices, where appropriate. The EOC was seeking the additional power to bring a case to court on its own, even when there was no complainant. The Government was discussing the matter with the EOC and had received additional information from it as recently as 28 October 1999. The Sex Discrimination Ordinance had been modelled on a similar instrument in the United Kingdom, but a body in that country that was the equivalent of the EOC did not have the power to take legal action on its own initiative.

24. Concern had also been expressed about the low level of women's participation in government boards and committees. The Government attributed that to cultural and sociological factors, but its aim was to ensure that equal opportunities were provided for both men and women to participate in public affairs through educational efforts, research programmes and public

awareness of the importance of equal opportunity. Hong Kong, as an international city, was forced to compete to survive. Only if the best people were hired could it prosper.

25. Equal opportunities were provided for in the appointment of members to government boards and committees. As far as possible, the best person was chosen, irrespective of whether it was a man or a woman. Of the three most senior members of the civil service, two were women. The Government was also trying to implement measures to promote appointment of community representatives to its committees and boards. Many organizations, including more than 100 women's organizations, had already been asked to put forward candidates. The improvement in women's representation on boards and committees over the past 10 years - from 14.9 per cent to 18.8 per cent - had been criticized as being too small. Yet in absolute terms the increase had been significant - from 453 to 900. The Government would continue to work to improve the situation, however.

26. Turning to the questions on the "small house" programme, he said the Government respected the old traditions of indigenous villages. In the past, only men aged 21 had had the right to apply for a piece of land to build a small house. The minimum age was now 18 and a review of the small-house policy was being carried out. It was a complicated issue, however, because land was in such limited supply in Hong Kong. Villagers complained that their right to own land was impeded by the lack of village extension areas and long waiting lists.

27. On village elections, he said a great many systems had been applied in the past, including one family, one vote, and no voting by women. The model rules had been introduced only recently, when the Sex Discrimination Ordinance had come into effect. The most important innovation they had brought about was that of one person, one vote, irrespective of whether the person was a man or a woman. Failure to comply with that requirement would prevent the person elected from being recognized as the village representative and from performing official functions in the village.

28. The two appeals cases regarding discrimination against non-indigenous villagers were still pending before the courts. In one case, a woman who was an indigenous villager had been able to vote, while her husband had not been, because he was not an indigenous villager (defined as a descendant of a person who had been resident in the village in 1889).

29. Lastly, he fully agreed with Mr. Pocar about the continuity of reporting obligations. China, which had not yet ratified the Covenant, had shown its good will by making special arrangements for reporting.

30. Mr. ALLCOCK (Hong Kong SAR) said that the grounds set out in the Public Order Ordinance and the Societies Ordinance for controlling or prohibiting public assemblies had been criticized for simply reproducing, without further refinement, the restrictions on freedom of association and assembly permissible under articles 21 and 22 of the Covenant. The Ordinances were part of domestic legislation and were accordingly subject to the Basic Law, including its article 39. If any decision made under those Ordinances was considered to contravene the Covenant, remedies were available, including

judicial review and an administrative appeal system. It had been suggested that such measures were expensive and inefficient. The Government's view was that it was wholly beneficial to allow applicants dissatisfied with decisions both administrative and judicial avenues of redress. As to whether the Ordinances discouraged the formation of societies and the holding of public assemblies, to his knowledge no applications for those purposes had been refused.

31. As to who made decisions about what was required by national security or public morals, he said that a societies officer appointed under the Societies Ordinance or, in the case of the Public Order Ordinance, a police officer would make the decision. In both cases, the individual making the decision must reasonably believe that the restriction was necessary in the interests of national security or public morals. Three grounds for objective control of such decisions by the courts were built into that provision: reasonable belief, necessity, and the interests of public security or morals. The Government considered the provision to be fully compliant with the Covenant.

32. The laws on the family, divorce, custody and succession applied to all people in Hong Kong regardless of race, religion, etc. In the past, some Chinese customary practices had been recognized as a special category of family law. Concubinage, for example, had been recognized as part of traditional Chinese family relations. Most of those practices had ceased to be recognized as from 1971, although in some cases relationships established before that date were still recognized. Adultery was not punishable under criminal law. As a general rule, no consensual sexual acts by adults were punishable as crimes. On the question whether people could take cases to court to defend human rights, human rights were justiciable under the Basic Law and people could and did go frequently to court, in many cases supported by government legal aid.

33. The Government was aware of concerns about criminal liability in the case of juveniles, and specifically that age 7 was too young. The Law Reform Commission was undertaking a review of that area of the law. It had already published a public consultation document setting out the age of criminal liability in other jurisdictions and outlining all the arguments for and against a change in Hong Kong's legislation.

34. Education through labour was not recognized as part of criminal sanctions. The criminal justice system was to a great degree modelled on that of the United Kingdom, and the types of sanctions, detention centres, etc., were very much in line with British practice. Under the principle of "one country, two systems", the criminal justice system had not been influenced at all by the situation on the mainland.

35. On the decision of the Standing Committee of the National People's Congress in February 1997 not to adopt a number of amendments that had previously been in force in Hong Kong (report, para. 380), he said 24 laws had been affected in whole or in part. The decision had been taken in accordance with article 160 of the Basic Law, which stipulated that laws contravening the Basic Law could not be passed. Most of the laws involved were relics of the colonial past and covered inconsequential matters. More controversial issues had included laws on arrangements for Legislative Council elections, recent

amendments to the Public Order Ordinance and the Societies Ordinance, and certain sections of the Bill of Rights Ordinance (BORO), all of which had not been adopted. The laws that had replaced the ones not adopted were consistent with the Covenant, so the Covenant's protection was in no way reduced.

36. Reference had been made to paragraph 390 of the report, which mentioned certain restrictions on societies that had connections with some types of foreign organizations. The restrictions were in line with certain prohibitions called for in article 23 of the Basic Law and were limited and justifiable. Soliciting or accepting financial contributions from a political organization, for example, was prohibited, reflecting a concern held in many countries that local political bodies should not be tools of a foreign nation.

37. Mr. LAN (Hong Kong SAR) said he was grateful to the NGOs attending the discussion for their quick and positive responses to the information given by his delegation at the previous meeting, particularly regarding the independence of Radio Television Hong Kong. However, he did not agree with the assertion that professional-grade staff were rarely transferred to overseas departments, and he gave some examples to counter that assertion.

38. Mr. SO (Hong Kong SAR), responding to a request for clarification on the two municipal councils, said that, on 14 and 20 July 1998 respectively, the Provisional Urban Council and the Provisional Regional Council had passed a motion in support of the proposal for the creation of one municipal council and one municipal service department. Nevertheless, the motion passed by the Legislative Council on 29 July 1999 had only asked the Government actively to consider the proposal and to consult the community fully before making a final decision. The Government had taken heed of that request and had launched a public consultation, collecting views from various sectors. It had found that the community supported the Government's assumption of direct responsibility for food safety and environmental hygiene. After study, the Government had concluded that the proposal for one council and one department was not the best way forward. It had therefore introduced in the Legislative Council a bill which would transfer the property, rights, functions and powers of the two municipal councils to the Government or to another statutory body. The bill was currently being scrutinized. The Government's aim was to have a new structure for delivery of municipal services in place by 1 January 2000.

39. As to whether the reservation to article 25 contravened the Covenant, particularly since no reservation had been made to article 26, he said the electoral system was in no way incompatible with any of the provisions of the Covenant as applied to Hong Kong. The legal effect of the reservation to article 25 (b) was to free the formation of the Legislative Council from the requirements of that provision. The intention was to ensure that the composition of the Council, and the pace and extent of elections thereto were decided in the light of the actual situation of Hong Kong and in accordance with the principle of orderly and gradual progress, as set out under the Basic Law. Article 25 (b) dealt with the right to participate in public life, whereas article 26 was a general provision. As the electoral system was not subject to the requirements set out under the specific provision, it could hardly give rise to any incompatibility with the general provision.

40. On the compatibility of the proposal to abolish the two municipal councils with article 25 of the Covenant, he said the councils had been established to allow for some public participation in municipal services at a time when there had been no elected Legislative Council. Because the responsibility of the municipal councils had been narrowly confined to municipal services, and in order to encourage greater public participation at the district level, a district body with a strong elected component had been functioning since the 1980s. With the development of representative government since that time, it was now questionable whether there were still valid reasons for maintaining a three-tiered representative system for a compact city like Hong Kong. The existence of the three tiers was not conducive to effective delineation of accountability and monitoring responsibilities. In short, the dissolution of the two municipal councils would not adversely affect Hong Kong's democratic development. People could still participate in public affairs, either directly or indirectly, through the Legislative Council and District Councils, the new Food and Environmental Hygiene Advisory Council and the Culture and Heritage Commission.

41. Mr. LAN (Hong Kong SAR) said that a question had been asked about harassment. He assumed that it referred to an event in Victoria Park in early October 1999 when a number of elderly men had expressed their views too energetically at a public forum. Freedom of expression, as he had said, must be tempered by respect for the rights of others and action within the framework of the law. The persons in question had been arrested and subsequently released on bail.

42. Ms. CHU (Hong Kong SAR), responding to the question about the detention of a Hong Kong resident on the mainland owing to an economic dispute involving his employer, said he had already been rescued by the mainland public security bureau, and his illegal detention and suspected involvement in economic fraud were now being investigated by the mainland authorities.

43. The Government had explained to the public and to the Legislative Council that Hong Kong residents, their relatives or their friends detained on the mainland could approach the Hong Kong Immigration Department for assistance. While not in a position to intervene in legal proceedings on the mainland, the Government had established effective channels to refer such requests for assistance to the mainland authorities for consideration. In its referrals, the Government could remind those authorities that any judicial proceedings should be conducted in accordance with due process of law, but it could not demand the release of the persons concerned or specify the amount of their bail.

44. The Government would closely monitor the development of such cases and was now introducing further measures to improve the assistance provided. They included establishment of a notification system under which family members of Hong Kong residents detained on the mainland would be informed of the detention to facilitate the rendering of assistance at the earliest opportunity. Agreement had already been reached with the mainland authorities on the notification system, which was expected to be in place by early 2000. A pamphlet would be published to enhance the understanding of mainland legal

procedures and complaint channels among Hong Kong residents. A list of legal firms on the mainland would be compiled to help Hong Kong residents or their families find legal representation.

45. As to whether the 1951 Convention relating to the Status of Refugees would be extended to Hong Kong, she said the Government had no intention of taking such action. Under the Immigration Ordinance, the Director of Immigration had the power to allow a person to remain in Hong Kong on exceptional, compassionate or humanitarian grounds. Although the "port of first asylum" policy had been abolished, genuine cases would continue to be dealt with through administrative procedures. Assistance from UNHCR might also be sought, as appropriate. There were currently about 970 Vietnamese refugees in Hong Kong.

46. Mr. DEAN (Hong Kong SAR), replying to a question concerning alleged gender discrimination in the HKSAR educational system, said that an attempt to compensate for the well-known fact that girls matured earlier than boys and therefore did better than boys in the early stages of secondary education had unfortunately had the effect of discriminating against girls. The issue was thus a valid one and was being looked into.

47. Replying to Ms. Evatt's question as to whether the Education Department was seeking exemption from the BORO in that connection, he said that the matter was currently at the discussion stage. Ms. Evatt had also asked a question about a survey on self-censorship conducted by an organization called the Political and Economic Risk Consultancy among 400 expatriates in 11 countries of the region. He had now been able to track the report down to some rather obscure press cuttings dated June 1999 and was in a position to say that the survey was scientifically worthless.

48. Lastly, replying to a question on film censorship raised by Mr. Klein, he said that it was difficult to see how the powers provided under the Film Censorship Ordinance could be extended to include political censorship, since political considerations were not included among those by virtue of which the censor might consider refusing a licence.

49. Ms. CHAN (Hong Kong SAR), replying to questions on trade unions raised by Mr. Ando, said that under the recently adopted new provisions, trade unions in HKSAR were allowed to be members of trade union organizations in foreign countries without having to obtain prior government approval. The rule requiring trade union officials to have had some experience in the trade or craft concerned, originally introduced in order to ensure better representation of members' interests, was currently being reviewed; however, statistics showed that all applications for the registration of officials having no previous experience of the trade had been approved in the past. The revised rules provided a right of appeal in the event of refusal to register an official. As to the use of union funds, the Chief Executive's approval was required for contributions or donations of funds to other trade unions in foreign countries; there again, all applications had been approved, with a single exception dating back to 1986. It should be noted that all the above occupational requirements and requirements of approval enjoyed the unanimous support of the Labour Advisory Board.

50. Mr. LAN (Hong Kong SAR), supplementing the replies given by Mr. Dean, said that the whole educational system of HKSAR was shortly to be placed under review. The delegation would be pleased to provide additional information on that and any other issue in writing at a later stage.

51. Ms. EVATT said that she wished to place on record that a second reference to the issue of self-censorship was to be found in the annual report of the Hong Kong Journalists' Association.

52. Mr. YALDEN pointed out that his observations about the lack of legislation governing racial discrimination in HKSAR had not received a substantive answer.

53. The CHAIRPERSON, noting that the Committee had concluded its consideration of the report of the HKSAR, thanked the delegation for its prompt and full compliance with its reporting obligations under the Covenant.

54. In a brief summary of the dialogue which had taken place, she said that the Committee's first subject of concern had been the HKSAR Government's action of referring to the Standing Committee for an interpretation of the law in connection with certain decisions reached by the Hong Kong courts. The Committee firmly believed, in accordance with article 14 of the Covenant, that the work of the courts must remain free from interference by other powers. It was unanimous in its view that the logic underlying the relevant article of the Basic Law, which was in line with the Covenant, had been disrupted by the Government's action. It did not accept the delegation's assurances of the exceptional nature of the action, considering that exceptions in the area of human rights were admissible only in times of public emergency officially proclaimed in accordance with article 4. The procedure adopted by the HKSAR Government eroded that rule and thus constituted a serious threat to the future implementation of human rights in the Special Administrative Region.

55. Other issues of major concern, many of which had already appeared in the Committee's concluding observations on the previous report relating to Hong Kong and would undoubtedly feature in the concluding observations soon to be adopted, included the question of racial and sexual discrimination; the need for an independent mechanism to investigate complaints against the police; the need to amend existing legislation on telecommunication and postal services; matters pertaining to electoral laws; and matters pertaining to freedom of the press.

56. In conclusion, she thanked the delegation for the goodwill it had shown and expressed the hope that the next report would again be submitted in good time and in due form.

57. Mr. ALLCOCK (Hong Kong SAR) said that he wished to place on record that the decision to seek an interpretation of the law from the Standing Committee had been taken well after the Court of Final Appeal had rendered its judgement. There had thus been no interference with the judicial process.

58. Mr. LAN (Hong Kong SAR) assured the Committee that all the views expressed, as well as the concluding observations when issued, would be duly brought to the attention of the HKSAR Government. On behalf of all his

colleagues, he expressed appreciation for the lively and energetic discussion which had taken place. His Government was very serious about implementing the provisions of the Covenant and was doing its best in a not entirely problem-free situation. In thanking the Committee for its interest, he reiterated his Government's invitation to the Chairperson and any representative she might wish to nominate to visit HKSAR at any time.

59. The HKSAR delegation withdrew.

The meeting was suspended at 11.55 a.m. and resumed at 12.15 p.m.

60. Mr. Bhagwati (Vice-Chairperson) took the Chair.

Draft list of issues to be taken up in connection with the consideration of the second periodic report of the Republic of Guyana (CCPR/C/99/2)

61. Ms. EVATT (Country Rapporteur) said that, in preparing the list of issues, the Working Group had been obliged to proceed on the basis of a report covering the period 1982-1987. Regrettably, the information available was scant, as well as being more than 10 years old. Nevertheless, rather than ask for an updated report that might never come, the Working Group had taken the view that an attempt should be made to establish a dialogue on the basis of the available material.

62. The CHAIRPERSON invited the Committee to consider the questions in the draft list of issues one by one.

Question 1

63. Mr. POCAR said that the wording of the question should be made stronger in view of the fact that Guyana had in the past failed to comply with the Committee's requests under rule 86 of the rules of procedure. Accordingly, he proposed that in the first sentence the words "what measures are taken" should be replaced by "what measures will in future be taken".

64. It was so decided.

65. Question 1, as amended, was adopted.

Questions 2-5

66. Questions 2-5 were adopted.

Question 6

67. Mr. HENKIN suggested that the last part of the question should be amended to read: "... lawyers, police officials and the community".

68. Question 6, as amended, was adopted.

Question 7

69. Ms. EVATT (Country Rapporteur) said a reference to article 7 should be added to the heading. The square brackets round the first sentence should be deleted.

70. Mr. AMOR said the connection between that sentence and the rest of the paragraph was not clear. It would be better to formulate it as a separate question, and to make the rest of the paragraph a new question 8.

71. Lord COLVILLE supported that suggestion. He proposed that in the third sentence "orders which judges are entitled to issue" should be amended to "orders which judges have issued".

72. Question 7, as amended, was adopted.

Question 8

73. Ms. EVATT (Country Rapporteur) noted that in the first line the words "death sentences passed" should be replaced by "death sentences imposed".

74. Question 8, as amended, was adopted.

Questions 9 and 10

75. Questions 9 and 10 were adopted.

Question 11

76. Ms. EVATT (Country Rapporteur) said that the first line should read: "What allegations of torture and abuse of detainees have been made ...". The paragraph included more questions than would usually be raised under article 7 because the Committee lacked up-to-date information on the matter.

77. Mr. AMOR said that, as he saw it, there were too many questions in the paragraph. The first one should be sufficient, and the rest could be put orally in the course of the discussion. It would take too much time for the delegation to reply to all the questions raised.

78. The CHAIRPERSON said that, in his view, it would be better to put the questions in written form so that the delegation would not have the excuse that it was not ready to answer them. Experience had shown that Guyana was often reluctant to provide the information requested of it.

79. Ms. EVATT (Country Rapporteur) agreed. She would prefer to retain question 11 in full.

80. Question 11, as amended, was adopted.

81. Mr. AMOR, pointed out that, although on the face of it the list of issues included only 27 questions, in fact there were at least 50. Perhaps some could be deleted.

82. Mr. KLEIN supported that view. He did not think questions 6, 16 and 18 were really necessary in view of the fact that only one day was available to deal with the entire list. If the State party tried to answer all the questions conscientiously, it would take a great deal of time, whereas if it did not, the Committee would blame it for not cooperating.

83. The CHAIRPERSON said it should be borne in mind that in the past Guyana had not cooperated at all with the Committee.

84. Mr. HENKIN considered that the Committee needed to be more critical in deciding what were the issues on which it was essential to have written answers.

85. Mr. YALDEN, referring to question 18, said that in fact it was very unlikely that the delegation would provide a reply to a question on discrimination on the ground of sexual orientation. Although he had proposed that question, he would not object to its deletion.

86. Mr. ZAKHIA agreed that the Committee should be careful to ensure that the questions it posed were relevant to the situation of the particular country concerned. While question 18 might be appropriate in the context of a European country, he did not think it was of great importance in relation to Guyana.

87. Mr. KLEIN said he had proposed the deletion of question 18 not because he did not regard it as important, but because it was the kind of question that could be answered on the spot without much preparation, and was therefore best put orally.

88. Lord COLVILLE recalled that it had earlier been decided to list issues in order of priority, rather than in order of articles of the Covenant. Although that decision had not been followed up, he believed that the Committee should at the very least identify the issues which should have priority and concentrate on those issues.

89. Mr. AMOR agreed with previous speakers that the Committee should in future take a closer look at the way in which it selected issues for inclusion on the list.

90. Ms. EVATT (Country Rapporteur) noted that in the past it had often proved very difficult to reach agreement on how to order the questions in terms of priorities, and for that reason the Working Group had not done so until now.

91. She proposed that questions 18 and 24 should be combined into a single question reading: "Please indicate whether there is legislation dealing with discrimination on grounds of sexual orientation, disability, age and other grounds stated in article 26".

92. The CHAIRPERSON said he took it that it was the wish of the Committee to delete questions 6 and 16 and to incorporate question 18 in paragraph 24.

93. It was so decided.

Question 12

94. Mr. YALDEN said that corporal punishment in schools was perhaps not of the highest priority in relation to Guyana. He suggested that question 12 should be deleted.

95. It was so decided.

Question 13

96. Question 13 was adopted.

Question 14

97. Ms. EVATT (Country Rapporteur) explained that the Committee needed more information on the rules referred to because it appeared that they alone regulated the treatment of detainees.

98. Lord COLVILLE suggested that the words "are amendments foreseen?" should be replaced by "is it intended to place these rules on a statutory basis?". If that were done, it would be much easier for safeguards to be applied.

99. Ms. EVATT (Country Rapporteur) said she was glad to accept that suggestion.

100. Question 14, as amended, was adopted.

Question 15

101. Mr. SOLARI YRIGOYEN suggested that the words "to eliminate malnutrition" should be substituted for "to diminish malnutrition".

102. Mr. AMOR proposed that "State party" should be substituted for "Prison Directorate".

103. Question 15, as amended, was adopted.

Question 17

104. Question 17 was adopted.

Question 19

105. The CHAIRPERSON suggested that the first sentence should be deleted.

106. Mr. YALDEN said he was somewhat puzzled by the reference to access to the Internet.

107. Ms. EVATT (Country Rapporteur) explained that in Guyana both broadcasting and the Internet were subject to censorship by the Ministry of Information. In her view, that was a subject the Committee might well explore.

108. Mr. YALDEN suggested "censorship of material being made available on the Internet".

109. Mr. AMOR considered that the first sentence could be retained. However, he did not think there was need to make specific mention of radio broadcasting frequencies or the Internet. Those points could be raised orally.

110. Ms. EVATT (Country Rapporteur) pointed out that most of the comments in the course of the discussion had been made by members of the Working Group, who had had an opportunity to make them at an earlier stage. To go into such detail on the list of issues in a public meeting was, in her view, not the best way to advance the Committee's work.

The meeting rose at 1.05 p.m.

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Sixty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1806th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 November 1999, at 3 p.m.

Chairperson: Mr. BHAGWATI

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1806/Add.1.

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Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-45199 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Draft list of issues to be taken up in connection with the consideration of the second periodic report of the Republic of Guyana (CCPR/C/99/Add.2; CCPR/C/68/Q/GUY/4)

1. The CHAIRPERSON invited the members of the Committee to resume consideration of the draft (CCPR/C/68/Q/GUY/4).

Paragraph 19

2. Mr. KLEIN, supported by Mr. POCAR and Ms. EVATT, proposed that the first two sentences of paragraph 19 should be deleted and the third retained.

3. The first two sentences were deleted.

4. Paragraph 19, as amended, was adopted.

Paragraph 20

5. Ms. EVATT proposed that paragraph 20 should be deleted. It appeared that a law had been adopted resolving the questions raised in paragraph 20, but it was difficult to obtain up-to-date information.

6. Mr. AMOR was of the view that paragraph 20 dealt with fundamental questions and should be retained.

7. Mr. YALDEN said that the first sentence of paragraph 20 was unclear; surely there was no such thing as divorce in the context of common law marriages.

8. Ms. EVATT said that the original text contained an error and should read: "Please provide information on the legislation adopted in 1990 on protecting and regulating the property rights of women with respect to divorce and common law marriage."

9. Paragraph 20, as amended, was adopted.

Paragraph 21

10. Paragraph 21 was adopted.

Paragraph 22

11. Ms. EVATT said that the reason for the paragraph was that the law adopted on the subject had given rise to problems of implementation which the authorities were trying to resolve.

12. Paragraph 22 was adopted.

Paragraph 23

13. Ms. EVATT said that the paragraph dealt with an extremely important issue in that members of Parliament in Guyana were not elected but designated by the heads of the political parties after the election of the President. Members of Parliament were not answerable to the voters for their acts.

14. The CHAIRPERSON noted that such practices ran counter to the provisions of article 25 of the Covenant.

15. Paragraph 23 was adopted.

Paragraph 24

16. Ms. EVATT said that the paragraph had already been amended, with the agreement of the Committee members.

17. Paragraph 24 was adopted.

Paragraph 25

18. Paragraph 25 was adopted.

Paragraph 26

19. Mr. KLEIN suggested that the question raised in the paragraph concerned article 26 rather than article 1 or article 27 of the Covenant.

20. Ms. EVATT proposed that questions relating to articles 26 and 27, on discrimination and the rights of minorities respectively, should be placed under a single heading.

21. Ms. Evatt's proposal was adopted.

22. Paragraph 26 was adopted.

Paragraph 27

23. Paragraph 27 was adopted.

24. The draft list of issues to be taken up in connection with the consideration of the second periodic report of the Republic of Guyana as a whole (CCPR/C/68/Q/GUY/4) was adopted.

The public part of the meeting rose at 3.30 p.m.